

What's Market: 2025 Mid-Year Trends in Large Cap and Middle Market Loans

by Practical Law Finance

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In your experience, what were the key trends in loan documentation and overall deal structures that occurred in the broadly syndicated loan (BSL) market in the first half of 2025?

The dynamics in the broadly syndicated loan (BSL) market during the first half of 2025 have been generally a continuation of 2024 dynamics. With the addition of uncertainties caused by tariff announcements and interest rates remaining high in the US, the hope for a meaningful increase in leveraged buyout activity in 2025 so far has not materialized. Rather, the vast majority of BSL market activity in 2025 continues to be from refinancings and repricings of existing BSLs as it was in 2024. As margins in the BSL market began to decrease in the first quarter of 2025, we did see some refinancings of private credit loans in the BSL market. However, that trend seemed to taper off in the second quarter as tariff announcements created uncertainty for borrowers and institutional investors.

With there not being a voluminous amount of new money BSLs closing in the first half of 2025, it is difficult to draw too fine a conclusion with respect to any particular loan documentation term. However, one general trend is that core liability management type protections have become more regular in new money BSLs in the first half of 2025.

In general, liability management exercises (LMEs) over the past few years have been conducted in two different formats:

- An uptiering transaction involves lenders providing a new money loan to a borrower on a senior basis to the BSL and typically also permits these lenders to roll up their portion of the BSL on a senior basis to the portion of the BSL of other lenders that do not participate in the LME.
- A dropdown transaction involves the contribution of material and often liquid assets into an unrestricted subsidiary (a subsidiary that is not bound by the covenants of the BSL) or a non-guarantor subsidiary (a subsidiary that is not required to guarantee the obligations of the borrower of the BSL) and a new money loan that is made to the unrestricted subsidiary or the non-guarantor subsidiary and secured by these material assets.

LMEs are usually conducted when a borrower is facing a maturity wall for a substantial amount of its debt and is unable to refinance this debt in the ordinary course under then current market conditions. As a result of LMEs becoming more common, investors in BSLs have increasingly asked for some form of protection in their loan documentation that limit the borrower's ability to undertake an uptiering or dropdown financing. They include:

- **Serta.** The addition of an all affected lender vote in order for the BSL to be subordinated in right of payment to, or the liens securing the BSL to be subordinated to the lien securing, other third party debt, unless each of the lenders under the BSL are offered the opportunity to participate as a lender under the new third party debt on a pro rata basis and on the same terms as the other lenders. Typical exceptions are for debt permitted as of the closing date to be senior in right of payment or to have a senior lien (typically

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purchase money debt/capital leases and receivables financings) and debtor-in-possession financings. A typical exception to the “on the same terms” requirement is for bona fide backstop fees and expenses. The effect of the Serta provision is to require the borrower to invite all of its lenders under a BSL to participate in an uptiering on a pro rata basis and on the same terms, other than backstop fees and expenses. This invitation is typically extended after a group of lenders has agreed to support the uptiering and commit to provide the new financing in exchange for a backstop fee.

- **J.Crew.** The addition of a covenant that prohibits:

- the contribution or other transfer of material intellectual property to an unrestricted subsidiary; and
- the designation of a subsidiary as unrestricted if it owns material intellectual property.

There is a fair amount of variability as to how material intellectual property is defined, and there are often exceptions for licenses of material intellectual property. The effect of the J.Crew provision is to limit the leakage of valuable assets outside the obligor group and the protections of the negative covenants of a BSL, where those assets can be separately financed.

- **Chewy.** A subsidiary guarantor is not released from its guarantee on becoming less than wholly owned by the borrower if the primary purpose for the subsidiary guarantor becoming less than wholly owned is to obtain the release of its guarantee.

Alternative formulations require a valid business purpose for the release and/or that the sale or distribution of shares must be to a bona fide joint venture on an arm's length basis. The effect of the Chewy protection is to prevent the release of a subsidiary guarantor in order for it to be used for a dropdown financing.

The form and substance of the above protective provisions can vary in material fashions. Not all protective provisions are created equal. However, it is fair to say that some version of each of the above protective provisions has made its way into most new money BSLs in the first half of 2025.

There are other LME protective provisions that are more common in the private credit markets and in uptiering and dropdown financings that have not generally made their way into new money BSLs so far in 2025. They include:

- **Pluralsight.** The expansion of J.Crew to apply to non-guarantor subsidiaries and also sometimes to apply to any material assets.
- **Envision.** Prohibiting the use of non-earmarked investment and/or restricted payment baskets to make investments in unrestricted subsidiaries.
- **Double Dip.** Restrictions on the use of an intercompany loan from a dropdown subsidiary to a borrower on a secured basis to create a second claim on the assets of the borrower and subsidiary guarantors of a BSL.

One other notable item is that, in order for a borrower to undergo an uptiering transaction, the loan documentation for the BSL must permit the borrower to buy back its loans on a non-pro rata basis or permit an exchange of a lender's portion of a BSL on a non-pro rata basis for a portion of the uptiered loan. There has not generally been an effort so far in 2025 new money BSL documentation to limit the ability of a borrower to conduct these buyback/exchange transactions, whether outright or with a majority lender vote.

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